

AMENDED IN SENATE MAY 16, 2011

AMENDED IN SENATE APRIL 27, 2011

SENATE BILL

No. 917

Introduced by Senator Lieu

(Coauthors: Senators Hancock and Strickland)

(Coauthors: Assembly Members Smyth, Solorio, and Williams)

February 18, 2011

An act to amend Section 597 of, and to add Section 597.4 to, the Penal Code, relating to animals.

LEGISLATIVE COUNSEL'S DIGEST

SB 917, as amended, Lieu. Animal abuse.

Existing law provides, subject to exceptions, that every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is guilty of a crime punishable as a misdemeanor or as a felony, or alternatively as a misdemeanor or a felony and a fine of not more than \$20,000.

This bill would revise the punishment for this offense to provide that it is punishable by imprisonment in a county jail for not more than one

year, or in the state prison, or by a fine of not more than \$20,000, or by both that fine and imprisonment. The bill would make other technical, nonsubstantive changes. By revising the penalty for an existing crime, this bill would impose a state-mandated local program.

Existing law proscribes animal abuse, as specified, including the failure to maintain and care for the premises and animals at pet shops. Existing law also generally provides that a pet store shall not sell, offer for sale, trade, or barter any dog or cat that is under 8 weeks of age, but may sell, offer for sale, trade, or barter a dog or cat over 8 weeks of age only if the animal is weaned.

This bill would provide, in addition and with specified exceptions, that it shall be a crime, punishable as specified, for any person to willfully sell or give away as part of a commercial transaction, a live animal on any street, highway, public right-of-way, parking lot, carnival, or boardwalk, or to display or offer for sale, or display or offer to give away as part of a commercial transaction, a live animal if the act of selling or giving away the live animal is to occur on any street, highway, public right-of-way, parking lot, carnival, or boardwalk. The bill would provide that a notice describing the charge and the penalty for a violation of this bill may be issued by a peace officer, animal control officer, or humane officer. By creating a new crime, this bill would impose a state-mandated local program.

This bill would incorporate changes to Section 597 of the Penal Code made by AB 109, which has been chaptered but is not operative, to become operative only if AB 109 becomes operative.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 597 of the Penal Code, as amended by
- 2 Section 1 of Chapter 450 of the Statutes of 1998, is amended to
- 3 read:
- 4 597. (a) Except as provided in subdivision (c) of this section
- 5 or Section 599c, every person who maliciously and intentionally

1 maims, mutilates, tortures, or wounds a living animal, or
2 maliciously and intentionally kills an animal, is guilty of a crime
3 punishable pursuant to subdivision (d).

4 (b) Except as otherwise provided in subdivision (a) or (c), every
5 person who overdrives, overloads, drives when overloaded,
6 overworks, tortures, torments, deprives of necessary sustenance,
7 drink, or shelter, cruelly beats, mutilates, or cruelly kills any
8 animal, or causes or procures any animal to be so overdriven,
9 overloaded, driven when overloaded, overworked, tortured,
10 tormented, deprived of necessary sustenance, drink, shelter, or to
11 be cruelly beaten, mutilated, or cruelly killed; and whoever, having
12 the charge or custody of any animal, either as owner or otherwise,
13 subjects any animal to needless suffering, or inflicts unnecessary
14 cruelty upon the animal, or in any manner abuses any animal, or
15 fails to provide the animal with proper food, drink, or shelter or
16 protection from the weather, or who drives, rides, or otherwise
17 uses the animal when unfit for labor, is, for each offense, guilty
18 of a crime punishable pursuant to subdivision (d).

19 (c) Every person who maliciously and intentionally maims,
20 mutilates, or tortures any mammal, bird, reptile, amphibian, or
21 fish, as described in subdivision (e), is guilty of a crime punishable
22 pursuant to subdivision (d).

23 (d) A violation of subdivision (a), (b), or (c) is punishable as a
24 felony by imprisonment in the state prison, or by a fine of not more
25 than twenty thousand dollars (\$20,000), or by both that fine and
26 imprisonment, or alternatively, as a misdemeanor by imprisonment
27 in a county jail for not more than one year, or by a fine of not more
28 than twenty thousand dollars (\$20,000), or by both that fine and
29 imprisonment.

30 (e) Subdivision (c) applies to any mammal, bird, reptile,
31 amphibian, or fish which is a creature described as follows:

32 (1) Endangered species or threatened species as described in
33 Chapter 1.5 (commencing with Section 2050) of Division 3 of the
34 Fish and Game Code.

35 (2) Fully protected birds described in Section 3511 of the Fish
36 and Game Code.

37 (3) Fully protected mammals described in Chapter 8
38 (commencing with Section 4700) of Part 3 of Division 4 of the
39 Fish and Game Code.

1 (4) Fully protected reptiles and amphibians described in Chapter
2 2 (commencing with Section 5050) of Division 5 of the Fish and
3 Game Code.

4 (5) Fully protected fish as described in Section 5515 of the Fish
5 and Game Code.

6 This subdivision does not supersede or affect any provisions of
7 law relating to taking of the described species, including, but not
8 limited to, Section 12008 of the Fish and Game Code.

9 (f) For the purposes of subdivision (c), each act of malicious
10 and intentional maiming, mutilating, or torturing a separate
11 specimen of a creature described in subdivision (e) is a separate
12 offense. If any person is charged with a violation of subdivision
13 (c), the proceedings shall be subject to Section 12157 of the Fish
14 and Game Code.

15 (g) (1) Upon the conviction of a person charged with a violation
16 of this section by causing or permitting an act of cruelty, as defined
17 in Section 599b, all animals lawfully seized and impounded with
18 respect to the violation by a peace officer, officer of a humane
19 society, or officer of a pound or animal regulation department of
20 a public agency shall be adjudged by the court to be forfeited and
21 shall thereupon be awarded to the impounding officer for proper
22 disposition. A person convicted of a violation of this section by
23 causing or permitting an act of cruelty, as defined in Section 599b,
24 shall be liable to the impounding officer for all costs of
25 impoundment from the time of seizure to the time of proper
26 disposition.

27 (2) Mandatory seizure or impoundment shall not apply to
28 animals in properly conducted scientific experiments or
29 investigations performed under the authority of the faculty of a
30 regularly incorporated medical college or university of this state.

31 (h) Notwithstanding any other provision of law, if a defendant
32 is granted probation for a conviction under this section, the court
33 shall order the defendant to pay for, and successfully complete,
34 counseling, as determined by the court, designed to evaluate and
35 treat behavior or conduct disorders. If the court finds that the
36 defendant is financially unable to pay for that counseling, the court
37 may develop a sliding fee schedule based upon the defendant's
38 ability to pay. An indigent defendant may negotiate a deferred
39 payment schedule, but shall pay a nominal fee if the defendant has
40 the ability to pay the nominal fee. County mental health

departments or Medi-Cal shall be responsible for the costs of counseling required by this section only for those persons who meet the medical necessity criteria for mental health managed care pursuant to Section 1830.205 of Title 9 of the California Code of Regulations or the targeted population criteria specified in Section 5600.3 of the Welfare and Institutions Code. The counseling specified in this subdivision shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. This provision specifies a mandatory additional term of probation and is not to be utilized as an alternative in lieu of imprisonment in the state prison or in a county jail when that sentence is otherwise appropriate. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This subdivision shall not apply to cases involving police dogs or horses as described in Section 600.

SEC. 1.5. Section 597 of the Penal Code, as amended by Section 410 of Chapter 15 of the Statutes of 2011, is amended to read:

597. (a) Except as provided in subdivision (c) of this section or Section 599c, every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of ~~an offense punishable by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, or by imprisonment in a county jail for not more than one year, or by a fine of not more than twenty thousand dollars (\$20,000), or by both that fine and imprisonment~~ *a crime punishable pursuant to subdivision (d).*

(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise,

1 subjects any animal to needless suffering, or inflicts unnecessary
2 cruelty upon the animal, or in any manner abuses any animal, or
3 fails to provide the animal with proper food, drink, or shelter or
4 protection from the weather, or who drives, rides, or otherwise
5 uses the animal when unfit for labor, is, ~~for every such~~ *each*
6 offense, guilty of a crime punishable ~~as a misdemeanor or by~~
7 ~~imprisonment pursuant to subdivision (h) of Section 1170, or by~~
8 ~~that imprisonment and by a fine of not more than twenty thousand~~
9 ~~dollars (\$20,000) pursuant to subdivision (d).~~

10 (c) *Every person who maliciously and intentionally maims,*
11 *mutilates, or tortures any mammal, bird, reptile, amphibian, or*
12 *fish, as described in subdivision (e), is guilty of a crime punishable*
13 *pursuant to subdivision (d).*

14 ~~(e) Every person who maliciously and intentionally maims,~~
15 ~~mutilates, or tortures any mammal, bird, reptile, amphibian, or fish~~
16 ~~as described in subdivision (d), is guilty of an offense punishable~~

17 (d) *A violation of subdivision (a), (b), or (c) is punishable as*
18 *a felony by imprisonment pursuant to subdivision (h) of Section*
19 *1170, or by a fine of not more than twenty thousand dollars*
20 *(\$20,000), or by both ~~the~~ that fine and imprisonment, or*
21 *alternatively, as a misdemeanor by imprisonment in ~~the~~ a county*
22 *jail for not more than one year, or by a fine of not more than twenty*
23 *thousand dollars (\$20,000), or by both that fine and imprisonment.*

24 ~~(d)~~

25 (e) Subdivision (c) applies to any mammal, bird, reptile,
26 amphibian, or fish which is a creature described as follows:

27 (1) Endangered species or threatened species as described in
28 Chapter 1.5 (commencing with Section 2050) of Division 3 of the
29 Fish and Game Code.

30 (2) Fully protected birds described in Section 3511 of the Fish
31 and Game Code.

32 (3) Fully protected mammals described in Chapter 8
33 (commencing with Section 4700) of Part 3 of Division 4 of the
34 Fish and Game Code.

35 (4) Fully protected reptiles and amphibians described in Chapter
36 2 (commencing with Section 5050) of Division 5 of the Fish and
37 Game Code.

38 (5) Fully protected fish as described in Section 5515 of the Fish
39 and Game Code.

1 This subdivision does not supersede or affect any provisions of
2 law relating to taking of the described species, including, but not
3 limited to, Section 12008 of the Fish and Game Code.

4 ~~(e)~~

5 (f) For the purposes of subdivision (c), each act of malicious
6 and intentional maiming, mutilating, or torturing a separate
7 specimen of a creature described in subdivision ~~(d)~~ (e) is a separate
8 offense. If any person is charged with a violation of subdivision
9 (c), the proceedings shall be subject to Section 12157 of the Fish
10 and Game Code.

11 ~~(f)~~

12 (g) (1) Upon the conviction of a person charged with a violation
13 of this section by causing or permitting an act of cruelty, as defined
14 in Section 599b, all animals lawfully seized and impounded with
15 respect to the violation by a peace officer, officer of a humane
16 society, or officer of a pound or animal regulation department of
17 a public agency shall be adjudged by the court to be forfeited and
18 shall thereupon be awarded to the impounding officer for proper
19 disposition. A person convicted of a violation of this section by
20 causing or permitting an act of cruelty, as defined in Section 599b,
21 shall be liable to the impounding officer for all costs of
22 impoundment from the time of seizure to the time of proper
23 disposition.

24 (2) Mandatory seizure or impoundment shall not apply to
25 animals in properly conducted scientific experiments or
26 investigations performed under the authority of the faculty of a
27 regularly incorporated medical college or university of this state.

28 ~~(g)~~

29 (h) Notwithstanding any other provision of law, if a defendant
30 is granted probation for a conviction under this section, the court
31 shall order the defendant to pay for, and successfully complete,
32 counseling, as determined by the court, designed to evaluate and
33 treat behavior or conduct disorders. If the court finds that the
34 defendant is financially unable to pay for that counseling, the court
35 may develop a sliding fee schedule based upon the defendant's
36 ability to pay. An indigent defendant may negotiate a deferred
37 payment schedule, but shall pay a nominal fee if the defendant has
38 the ability to pay the nominal fee. County mental health
39 departments or Medi-Cal shall be responsible for the costs of
40 counseling required by this section only for those persons who

1 meet the medical necessity criteria for mental health managed care
2 pursuant to Section 1830.205 of Title 7 9 of the California Code
3 of Regulations or the targeted population criteria specified in
4 Section 5600.3 of the Welfare and Institutions Code. The
5 counseling specified in this subdivision shall be in addition to any
6 other terms and conditions of probation, including any term of
7 imprisonment and any fine. This provision specifies a mandatory
8 additional term of probation and is not to be utilized as an
9 alternative in lieu of imprisonment pursuant to subdivision (h) of
10 Section 1170 or county jail when ~~such a~~ *that* sentence is otherwise
11 appropriate. If the court does not order custody as a condition of
12 probation for a conviction under this section, the court shall specify
13 on the court record the reason or reasons for not ordering custody.
14 This subdivision shall not apply to cases involving police dogs or
15 horses as described in Section 600.

16 SEC. 2. Section 597.4 is added to the Penal Code, to read:

17 597.4. (a) It shall be unlawful for any person to willfully do
18 either of the following:

19 (1) Sell or give away as part of a commercial transaction, a live
20 animal on any street, highway, public right-of-way, parking lot,
21 carnival, or boardwalk.

22 (2) Display or offer for sale, or display or offer to give away as
23 part of a commercial transaction, a live animal, if the act of selling
24 or giving away the live animal is to occur on any street, highway,
25 public right-of-way, parking lot, carnival, or boardwalk.

26 (b) (1) A person who violates this section for the first time shall
27 be guilty of an infraction punishable by a fine not to exceed two
28 hundred fifty dollars (\$250).

29 (2) A person who violates this section for the first time and by
30 that violation either causes or permits any animal to suffer or be
31 injured, or causes or permits any animal to be placed in a situation
32 in which its life or health may be endangered, shall be guilty of a
33 misdemeanor.

34 (3) A person who violates this section for a second or subsequent
35 time shall be guilty of a misdemeanor.

36 (c) A person who is guilty of a misdemeanor violation of this
37 section shall be punishable by a fine not to exceed one thousand
38 dollars (\$1,000) per violation. The court shall weigh the gravity
39 of the violation in setting the fine.

1 (d) A notice describing the charge and the penalty for a violation
2 of this section may be issued by any peace officer, animal control
3 officer, as defined in Section 830.9, or humane officer qualified
4 pursuant to Section 14502 or 14503 of the Corporations Code.

5 (e) This section shall not apply to the following:

6 (1) Events held by 4-H Clubs, Junior Farmers Clubs, or Future
7 Farmers Clubs.

8 (2) The California Exposition and State Fair, district agricultural
9 association fairs, or county fairs.

10 (3) Stockyards with respect to which the Secretary of the United
11 States Department of Agriculture has posted notice that the
12 stockyards are regulated by the federal Packers and Stockyards
13 Act (7 U.S.C. Sec. 181 et seq.).

14 (4) The sale of cattle on consignment at any public cattle sales
15 market, the sale of sheep on consignment at any public sheep sales
16 market, the sale of swine on consignment at any public swine sales
17 market, the sale of goats on consignment at any public goat sales
18 market; and the sale of ~~equine~~ *equines* on consignment at any
19 public equine sales market.

20 (5) Live animal markets regulated under Section 597.3.

21 (6) A public animal control agency or shelter, society for the
22 prevention of cruelty to animals shelter, humane society shelter,
23 or rescue group regulated under Division 14 (commencing with
24 Section 30501) of the Food and Agricultural Code. For purposes
25 of this section, “rescue group” is a not-for-profit entity whose
26 primary purpose is the placement of dogs, cats, or other animals
27 that have been removed from a public animal control agency or
28 shelter, society for the prevention of cruelty to animals shelter, or
29 humane society shelter, or that have been surrendered or
30 relinquished to the entity by the previous owner.

31 (7) The sale of fish or shellfish, live or dead, from a fishing
32 vessel or registered aquaculture facility, at a pier or wharf, or at a
33 farmer’s market by any licensed commercial fisherman or an owner
34 or employee of a registered aquaculture facility to the public for
35 human consumption.

36 (8) A cat show, dog show, or bird show, provided that all of the
37 following circumstances exist:

38 (A) The show is validly permitted by the city or county in which
39 the show is held.

1 (B) The show's sponsor or permittee ensures compliance with
2 all federal, state, and local animal welfare and animal control laws.

3 (C) The participant has written documentation of the payment
4 of a fee for the entry of his or her cat, dog, or bird in the show.

5 (D) The sale of a cat, dog, or bird occurs only on the premises
6 and within the confines of the show.

7 (E) The show is a competitive event where the cats, dogs, or
8 birds are exhibited and judged by an established standard or set of
9 ideals established for each breed or species.

10 (9) *A pet store as defined in subdivision (i) of Section 122350*
11 *of the Health and Safety Code.*

12 (f) Nothing in this section shall be construed to in any way limit
13 or affect the application or enforcement of any other law that
14 protects animals or the rights of consumers, including, but not
15 limited to, the Lockyer-Polanco-Farr Pet Protection Act contained
16 in Article 2 (commencing with Section 122125) of Chapter 5 of
17 Part 6 of Division 105 of the Health and Safety Code, or Sections
18 597 and 597I of this code.

19 (g) Nothing in this section limits or authorizes any act or
20 omission that violates Section 597 or 597I of this code, or any
21 other local, state, or federal law. The procedures set forth in this
22 section shall not apply to any civil violation of any other local,
23 state, or federal law that protects animals or the rights of
24 consumers, or to a violation of Section 597 or 597I of this code,
25 which is cited or prosecuted pursuant to one or both of those
26 sections, or to a violation of any other local, state, or federal law
27 that is cited or prosecuted pursuant to that law.

28 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
29 *Section 597 of the Penal Code proposed by both this bill and AB*
30 *109, which has been chaptered but is not operative. Section 1.5*
31 *shall become operative only if (1) this bill is enacted and becomes*
32 *effective on or before January 1, 2012, (2) this bill amends Section*
33 *597 of the Penal Code, and (3) AB 109 becomes operative, in*
34 *which case Section 597 of the Penal Code, as amended by Section*
35 *1 of this bill, shall remain operative only until the operative date*
36 *of AB 109, at which time Section 1.5 of this bill shall become*
37 *operative.*

38 ~~SEC. 3.~~

39 *SEC. 4.* No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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